

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:12-po-007

-vs-

Magistrate Judge Michael R. Merz

:

CYRIL ZIBRIK,

Defendant.

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**ORDER FOR BRIEFING**

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This case came on for trial to the Court sitting without a jury on July 12, 2012.

At the conclusion of the case, the Court found the Defendant guilty and imposed a fine. Having thought about the matter further, the Court is in doubt as to the propriety of its holding. The United States presented no evidence that the Defendant's speed was greater than reasonable or proper for the conditions on Springfield Street at the date and time when Defendant was stopped. Instead, the Government presented evidence that Defendant exceeded the posted prima facie speed limit of 35 miles per hour.

The Court understands that it is the Government's theory that its evidence is sufficient because Ohio Revised Code § 4511.21(C) provides in pertinent part:

It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section, or any declared pursuant to this section by the director or local authorities and it is unlawful for any person to exceed any of

the speed limitations in division (D) of this section.

The court understands it to be the Government's theory that, once it has established a prima-facie case, the burden shifts to the Defendant to show that his or her speed was not unreasonable for the conditions, proof in the nature of an affirmative defense.

The Court is uncertain of the correctness of the Government's theory. Although Defendant did not make a motion for judgment of acquittal, he was proceeding pro se and it is the Court's obligation to protect his right not to be convicted on sufficient evidence. Accordingly, the Court *sua sponte* will consider whether to grant a post-verdict motion for judgment of acquittal.

Not later than July 30, 2012, the Special Assistant United States Attorney shall file a memorandum of law in support of the Government's interpretation of Ohio Revised Code § 4511.21. The Clerk shall not enter judgment in this case pending a ruling on the motion for judgment of acquittal.

July 12, 2012.

s/ *Michael R. Merx*  
United States Magistrate Judge